

**STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS**

**COMMISSIONER OF EDUCATION**

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**Student M. Doe**

**v.**

**North Providence School Department**

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**DECISION**

Held: This matter is before the Commissioner on the basis of a request for an interim protective order in a matter concerning the provision of special education to a student. It is determined that the student's placement in the private school he is now attending is subject to a "stay-put placement" under federal and Rhode Island law. The North Providence School Department is directed to continue payment for this student's education at this private school and that the private school continues to provide him with FAPE until all applicable due process procedures are completed. It is further required that nothing herein shall be construed to prevent the North Providence School Department and the private school from taking action to remove this student from his present placement for 45 school days in the event this student commits a disciplinary violation warranting action under 20 U.S.C. 1415 (k) (1).

**DATE:** September 21, 2011

## **Jurisdiction and Travel of the Case**

This matter is before the Commissioner on the basis of a request for an interim protective order in a matter concerning the provision of special education to a student. Jurisdiction is present under R.I.G.L.16-39-1, R.I.G.L.16-39-2 and R.I.G.L. 16-39-3.2. The case at hand arises squarely under R.I.G.L. 16-24-1, *et seq.*, entitled Children with Disabilities, the *Rhode Island Board of Regents Regulations Governing the Education of Students with Disabilities* and the federal *Individuals with Disabilities Education Act* (IDEA), 42 U.S.C. 1415, *et seq.* and the Federal regulations associated with the IDEA. See 34 CFR 300.1, *et seq.* Given these statutes, all of which relate to the provision of special education, this matter arises under laws “relating to schools or education.” R.I.G.L.16-39-1 and R.I.G.L. 16-39-2. Accordingly, jurisdiction is present to hear and decide this matter.

## **Positions of the Parties**

### **The Parent**

The parent contends that federal and Rhode Island law require that the student in this case (Student Doe), who is receiving special education services at an approved private special education school in a placement arranged by the North Providence School District, must be allowed to continue enrollment in this private school until the resolution of a due process special education complaint that the parent has filed with the Rhode Island Department of Education

### **The North Providence School District and the Private School**

As will be explained below, the North Providence School District and the private school contend that student Doe is not entitled to a “stay-put placement” at the private school.

## **Findings of Fact**

The North Providence School Department, in accordance with its responsibilities pursuant to R.I.G.L.16-24-1 to provide Student Doe with a “free appropriate public education” (FAPE), placed

him in a private Rhode Island day school. On May 25, 2010, the North Providence School Department and the private school entered into a “Placement Agreement.” In its first paragraph the agreement provided as follows:

School agrees to provide special education services for [Student Doe], commencing on September 1, 2010 and ending on June 8, 2011. Such special education services provided by the School shall comply and be consistent with: (a) all elements of the Student’s agreed upon Individualized Education Plan (“IEP”); and (b) the requirements of the applicable state and federal special education laws.<sup>1</sup> (Emphasis added)

This private school is approved by the Rhode Island Department of Education for the provision of special education to students. Student Doe was educated at this private school for two years under an IEP prepared by the North Providence School Department in cooperation with the private school.<sup>2</sup> Student Doe’s most recent IEP was the result of an IEP meeting held on December 2, 2010. This IEP was to be effective from November 9<sup>th</sup>, 2010 to November 8, 2011.<sup>3</sup> On May 19<sup>th</sup>, 2011, an IEP team meeting took place to review Student Doe’s school progress. At this meeting it was first suggested by the private school that it might not be an appropriate placement for Student Doe due to his misbehavior.

As a result of by Student Doe’s misbehavior during the 2010-2011 school year, the private school concluded that Student Doe was no longer an appropriate match for the school and that Student Doe’s placement at the school no longer provided him with an appropriate education. This misbehavior included the use of disrespectful and at times threatening language directed at teachers. The private school concluded that: “For the past year, [Student Doe] was not able to achieve any of the goals set for him within the social pragmatic, classroom management and self-regulation areas in his IEP.”<sup>4</sup> Of course Student Doe’s parent disagrees with the private school’s conclusion.

By a letter addressed to North Providence public school authorities on June 28, 2011, the private school advised that it was, in essence, canceling the student’s enrollment at the private school.<sup>5</sup> The

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<sup>1</sup> Exhibit 8

<sup>2</sup> Exhibit 1.

<sup>3</sup> Id.

<sup>4</sup> Exhibit 2.

<sup>5</sup> Id.

student's parent, who had prior discussions with the private school about this situation, was copied in this correspondence.

North Providence concurred with the private school's decision to terminate student Doe's enrollment at the private school. On August 11, 2011, the North Providence School Department, through its Director of Special Education, wrote to Student Doe's parent as follows:

Due to receipt of a letter from the [Private School] recommending the dismissal of your son, [Student Doe], I am requesting that you contact me to arrange for an IEP review to discuss your son's educational placement.<sup>6</sup>

Thereafter the North Providence School Department offered to place student Doe in a school operated by the Providence Center.<sup>7</sup> Student Doe's parent objected to this proposed placement and to the cancelation of Student Doe's enrollment at the private school. Student Doe's parent has claimed a special education due process hearing under paragraph 300.507 of the *Rhode Island Board of Regents Regulations Governing the Education of Children with Disabilities*<sup>8</sup> and has also filed a request for an interim protective order under R.I.G.L. 16-39- 3.2 in order to maintain Student Doe's placement at the private school at least until his due process hearing request is ruled upon by a special education hearing officer.

### **Conclusions of Law**

1. As a condition of participating in the federal *Individuals with Disabilities Education Act* Rhode Island must ensure that students placed by public education agencies in private schools for the purpose of providing a student with FAPE "have all the rights the children would have if served by such agencies". 20 U.S.C. 1412 (a) (10) (B). In pertinent part the law states:

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<sup>6</sup> North Providence Exhibit A.

<sup>7</sup> North Providence Exhibit B. Attached to this exhibit is a copy of the federally required procedural safeguards and the required ten (10) day notice concerning a proposed change in placement.

<sup>8</sup> This complaint was filed by letter of petitioner's counsel on September 1, 2011 and addressed to the Rhode Island Department of Education.

**(B) Children placed in, or referred to, private schools by public agencies**

(i) In general Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this subchapter or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

(ii) Standards In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State educational agencies and local educational agencies and that children so served have all the rights the children would have if served by such agencies. (Emphasis added)

2. Since Rhode Island has elected to participate in the IDEA, it must comply with the terms of this act, including the provision of FAPE and the provision of procedural safeguards. *Smith v. Cumberland School Committee*, 415 A.2d 168 (R.I. 1980). Moreover, it is provided under R.I.G.L. 16-24-1 that:

**Duty of school committee to provide special education.** – (a) In any city or town where there is a child with a disability within the age range as designated by the regulations of the state board of regents for elementary and secondary education, who is functionally limited to such an extent that normal educational growth and development is prevented, the school committee of the city or town where the child resides shall provide the type of special education that will best satisfy the needs of the child with a disability, as recommended and approved by the state board of regents for elementary and secondary education in accordance with its regulations governing the education of children with disabilities. (Emphasis added) \*\*\*

(d) For the purpose of this statute, a free and appropriate education is defined as special education services and related services that:

- (i) Are provided at public expense, under public supervision and direction, and without charge;
- (ii) Meet all of the standards and requirements of the state of Rhode Island department of education and requirements of the regulations of the board of regents for elementary and secondary education governing the education of children with disabilities, which shall include initial evaluation and determination procedures;
- (iii) Include preschool, elementary school or secondary school education in the state; and
- (iv) Are provided in conformity with an individualized education program that meets the requirements of the regulations of the board of regents for elementary and secondary education governing the education of children with disabilities.)

3. The Federal Individuals with Disabilities Act (IDEA) states at 20 U.S.C. 1415 (j) as follows:

**(j) Maintenance of current educational placement**

Except as provided in subsection (k) (4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if

applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

This federal enactment is known as the “stay-put provision.”

4. The Rhode Island Board of Regents Regulations Governing the Education of Students with Disabilities conforms to the “stay-put provision” by requiring at 300.518 that:

(a) Except as provided in 300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

5. Under 20 U.S.C. 1415 (j) a state agency, at the request of a parent, may agree to change a student’s placement even over the objection of local school authorities. *Burlington School Committee, et al., vs. Massachusetts Department of Education*, 471 U.S. 359 (1985).

6. Existing law is an implied term in every contract under Rhode Island law. *Citizens for the Preservation of Waterman Lake v. Davis*, 420 A.2d 53 (R.I., 1980).

7. R.I.G.L 16-39-3.2 states:

**Interim protective orders.** – In all cases concerning children, other than cases arising solely under § 16-2-17, the commissioner of elementary and secondary education shall also have power to issue any interim orders pending a hearing as may be needed to ensure that a child receives education in accordance with applicable state and federal laws and regulations during the pendency of the matter. Hearings on these interim orders shall be conducted within five (5) working days of a request for relief and the decision shall be issued within five (5) working days of the completion of the hearing. These interim orders shall be enforceable in the superior court at the request of any interested party.

8. In a case analogous to the instant action, the Commissioner of Education was presented with a situation where the Groden Center, a private Rhode Island special education school, was attempting to terminate the enrollment of a student who had been placed at the Groden Center by a Rhode Island school district for the purpose of providing the student with FAPE. In deciding the case, the Commissioner held that:

The petitioner in this case contends that the Groden Center is the appropriate placement for this student and further contends that the well-known difficulty which autistic children experience in dealing with any change in routine make it imperative that this student stay in the Groden Center. The Groden Center contends that it is not an appropriate placement for this student. The School District suggests that with cooperation it could arrange a comparable placement for this student at the Trudeau Center. Of course, the petitioner does not accept this. We think that we must leave this aspect of the dispute where Congress mandated that it be left – with an independent Hearing Officer and the applicable due process procedures. (Regs. 300.13). We limit ourselves to ruling that this student’s placement at the Groden Center cannot be changed until the dispute is resolved.<sup>9</sup>

## **9. The Rhode Island Commissioner of Education has held the following:**

“In the case of In the Matter of Kerry H., we discussed the fact-driven approach that is used to determine the student’s “current educational placement” for purposes of the “stay-put” provision [Decision, p. 5]. We stated that the “current educational placement” was the “last uncontested (i.e., acquiesced to) placement . . . in which the student was receiving services from the school district.” [Ibid.]. This, then, is the scope of the narrow inquiry that we conduct in a “stay put/status quo” case.”<sup>10</sup>

## **Discussion**

The respondent private school contends that an interim protective order in this matter directing the private school to maintain Student Doe’s placement at the school would in some way constitute an impermissible taking of the school’s property. We must reject this contention since the school itself agreed, in its contract with the North Providence School Department, to comply with, “the requirements of the applicable state and federal special education laws.”<sup>11</sup> The “stay-put” provision is obviously such a law. 20 U.S.C. 1415 (j). We also note that existing law is an implied term in every contract under Rhode Island law.<sup>12</sup> In any event, it is obvious that the private school in this matter would continue to receive tuition payments, as previously agreed to, from the North Providence School District. We can therefore find no impermissible taking in this matter.

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<sup>9</sup> *Parent of John A.G. Doe vs. A Rhode Island School District and the Groden Center, Inc.*, Commissioner of Education, June 30, 1988, Case Number 0015-88.

<sup>10</sup> *Student M. Doe v. North Kingston School Committee*, Commissioner of Education, June 26, 2006, Case Number 0025-06

<sup>11</sup> Exhibit 2.

<sup>12</sup> *Citizens for the Preservation of Waterman Lake v. Davis*. 420 A.2d 53 (R.I., 1980)

The respondent private school also contends that under R.I.G.L. 16-39-3.2 the matter of this interim order cannot be heard by an employee of the Rhode Island Department of Education because under federal law only non-employees of the state or of a local school district may hear “special education complaints under 20 U.S.C. 1415. We find this suggestion inapposite since the non-employee requirement only applies to special education “complaints” filed under 20 U.S.C. 1415 (f). The matter now before us comes under R.I.G.L. 16-39-3.2, Rhode Island’s interim order statute which is in the nature of an administrative injunction proceeding intended to protect students’ educational rights “pending a hearing.” This Rhode Island statute has nothing to do with special education “complaints filed under 20 U.S.C. 1415 (f). In any event, the Commissioner’s decision to grant a parent’s request for an interim order constitutes an *agreement* with the state that a placement should be changed. There is no reason why such an “agreement” may not be made through individuals who are employed by a state agency.<sup>13</sup>

The respondent private special education school also contends that just as the Family Court lacks authority to require a private psychiatric hospital to admit a patient, the Rhode Island Commissioner of Education lacks authority to require a private special education school to continue to provide special education services to a student that is enrolled in the private school under a contract with a public school to provide the student with FAPE as required by state and federal law. To support this contention the private school relies on *In Re Stephen B*, 826 A.2d 985 (R.I., 2003). The short answer to this contention is that by virtue of its decision to accept the enrollment of Student Doe for the purpose of providing him with FAPE, the private school has bound itself under the law and by its own agreement<sup>14</sup> to comply with all applicable state and federal laws governing the provision of special education—including the observance of the “stay-put provision.” 20 U.S.C. 1412 (a) (10) (B) and 20 U.S.C. 1415 (j).

Finally, both the school district and the private school contend that placement of Student Doe at the Providence Center School would not constitute a change in placement because Student Doe can receive the same educational services at the Providence Center School that he is now receiving the private special education school in which he is now enrolled. The parent of course disagrees with this

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<sup>13</sup> *Burlington School Committee v. Department of Education*, 85 L. Ed. 2d 233 (1985).

<sup>14</sup> Exhibit 2



assertion. As stated in *Student Doe v. the Groden Center*: “We think that we must leave this aspect of the dispute where Congress mandated that it be left – with an independent Hearing Officer and the applicable due process procedures.”<sup>15</sup>

### **Conclusion**

We find that the student’s placement in the private school constitutes a “stay-put placement” under federal and Rhode Island law. The North Providence School Department is directed to continue payment for this student’s education at this private school until all applicable due process procedures are completed. It is further ordered that the private special education school continue to provide him with FAPE until all applicable due process procedures are completed. Nothing herein shall be construed to prevent the North Providence School Department and the private school from taking action to remove this student from his present placement for 45 school days in the event this student commits a disciplinary violation warranting action under 20 U.S.C. 1415 (k) (1).

For the Commissioner

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Forrest L. Avila  
Hearing Office

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Deborah A. Gist  
Commissioner

Date: September 21, 2011

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<sup>15</sup> *Parent of John A.G. Doe vs. A Rhode Island School District and the Groden Center, Inc.*, Commissioner of Education, June 30<sup>th</sup>, 1988, Case Number 0015-88.